

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 461 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MANISHBHAI RASIKLAL SONI

Versus

STATE OF GUJARAT

Appearance:

MR BHARAT T RAO for Petitioner

MR S.A.PANDYA, APP for Respondent No. 1

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 19/03/99

ORAL JUDGEMENT

The present petitioner - original accused has filed the present Criminal Revision Application against

the order passed by the Courts below wherein his prayer was regarding the custody of the muddamal revolver which has been recovered during the course of investigation. The petitioner has filed an application under section 451 of the Criminal Procedure Code before the Court below and after hearing the learned counsels for the parties, the said application has been rejected by the Court below mainly on the ground that the said muddamal will be required at the time of trial and if it is handed over to the accused, then, it may not be available at the time of trial and secondly, identification of the revolver will come in their way. The petitioner, has, therefore filed a revision application being Criminal Revisional Application No.183 of 1998 wherein also the same has been rejected on the same ground and therefore the present petition.

2 I have heard the learned counsels for the respective parties. The learned counsel for the petitioner has stated before the Bar that the revolver in question is a 32 bore revolver of Webley make bearing no.79777. According to the learned counsel for the petitioner the question of identification will not come in the way of the prosecution at the time of trial and he has also argued that even for that also some strictest conditions can be imposed. He has also argued that the licence of the said revolver has been granted by the authority after considering the necessity and if the same is not returned back to the petitioner - accused, then, it will be very difficult for him to continue his business looking to the facts and circumstances of the case. Shri S.A. Pandya, learned APP, has no objection if the same is handed over back to the petitioner-accused with certain conditions.

3 That the revolver in question is a licensed revolver and the petitioner-accused had got a right to have the revolver back. The revolver has an identification number and therefore the question of identification will not arise at the time of trial for the prosecution. Over and above, if the same will not be returned to the petitioner, the trial will take its own time and the revolver will become junk and settled position of law is very clear that generally muddamal article should be handed over back to the person from whom it would have been recovered. Here, it is not in dispute that the muddamal in question has been recovered from the petitioner-accused and even I have issued notice to the complainant which has been duly served upon him. However, he has chosent not to remain present either personally or through a learned advocate.

4 Shri B.T. Rao, learned counsel for the petitioner states that the charge sheet has been filed long back in this matter in the month of January itself and therefore the revolver in question is lying in the Court as an muddamal. I therefore pass the following order:-

That the learned Metropolitan Magistrate, Court No.16, Ahmedabad, is hereby directed to hand over the muddamal article i.e. 32 bore revolver of Webley make bearing no.79777 which has been taken as a muddamal in Criminal Case No.1303 of 1998 on the usual terms and conditions on the petitioner - original accused executing a solvent surety bond of Rs.1 lakh (Rupees one lakh only) and further on the condition that he shall submit an undertaking before the Court below to the effect that he shall not dispose of, deal with it and that he shall produce it as and when he is directed to do so during the pendency of trial.

This criminal revision application is accordingly allowed. Rule is made absolute with no order as to costs. D.S. is permitted.

(mohd)